HIGH COURT OF UTTARANCHAL AT NAINITAL

Special Appeal No. 25 of 2004

Rishipal Singh S/o Sri Ajab Singh,
R/o 725 South Civil Line, Muzaffarnagar. ….Appellant.

Vs.

Industrial Investment Bank of India Ltd.
And Six others. …..Opp. Party.

Sri H.C. Husnain, learned Senior counsel assisted by,
Sri A.K.Sharma, Adv. for the appellant,
Ms. Menka Tripathi, Adv. for the PICUP,
Sri V.B.S. Negi, learned counsel for M/s Vishal Enterprises,
Sri Naresh Pant, Adv. for U.P.F.C..

Coram: Hon'ble M.M. Ghildiyal, J.
Hon'ble B.C. Kandpal, J.

Dated: Nainital August 26, 2004

PC:

The present Special Appeal has been preferred against the order 07.08.2004 passed by this Court.

The Industrial Investment Bank of India Ltd. moved a company application before this Court u/s 40 of the Industrial Reconstruction Bank of India Act 1984 with the following prayers:-

a) The properties mentioned in the schedule A,B & C appearing hereinafter in this petition be sold:
b) Ad-interim order of injunction be passed restraining the respondents their agents and servants from removing or alienating or encumbering or transferring the properties and assets mentioned in Schedules A, B & C appearing hereinafter in this petition.
c) A Receiver be appointed over the properties and assets mentioned in the Schedules A, B, & C appearing hereinafter in this petition.
d) A notice be issued to the respondents to show cause why:-
    i) An order for sale shall not be made in terms of prayer (a) hereinabove:
    ii) The order of injunction issued in terms of prayer (b) hereinabove shall not be made absolute:

iii) The order of Receiver issued in terms of prayer (c) hereinabove shall not be made absolute;

e) After hearing the cause shown, if any, by the respondents;
   i) The properties mentioned in Schedules A, B, & C appearing hereinafter in this petition be sold;
   ii) The order of injunction and receiver be made absolute:
f) The sale proceeds be applied for the discharge of the dues of the petitioner no.1 as mentioned in paragraph no. 12 and 13, hereinabove together with the costs of the present proceedings:
g) Ad-interim orders in terms of prayer (a), (b) and (c) hereinabove;
h) Such other of further order or orders be passed as to this Hon'ble Court may deem fit and proper;

This Court, after hearing the parties, on 29.06.2004, has decided the application holding therein that since the auction sale has already been finalized, the application of the company stand decided accordingly.

The appellant moved an application for review of the order dated 29.06.2004 which was also dismissed by this Court on 07.08.2004.

Aggrieved by the aforesaid two orders, this Special Appeal has been preferred by the appellant.

It is significant to mention here that in the original application moved by the Industrial Investment Bank of India Ltd. and another in Company Application no. 9/2001 Industrial Investment Bank of India Ltd. and another vs. M/s A.P.R. Wools Pvt. Limited and three others, the appellant was not a party.

We have heard Sri H. G. Husnain, learned Senior counsel assisted by, Sri A.K. Sharma, Adv. for the appellant, Ms. Menka Tripathi, Adv. for the PICUP, Sri V.B.S. Negi, learned counsel for M/s Vishal Enterprises, and Sri Naresh Pant, Adv, for U.P.F.C. and perused the record.

Initially the application was moved u/s 40 of the Industrial Reconstruction Bank of India Act 1984. Learned counsel for the respondents have raised objection on the maintainability of the present Special Appeal. They have submitted that there is specific provision for appeal against the decision of the High Court u/s 40 Sub section 12 of The Industrial Reconstruction Bank of India Act 1984.

Section 40 of Sub Section 12 of the Industrial Reconstruction Bank of India Act 1984 reads as under:-

"(12) Any party aggrieved by an order under sub-section (3), sub-section (7) or sub-section (9), within thirty days from the date of the order, prefer an appeal to the court empowered to hear appeals from the decision of the High Court which passed the order and the appellate court may, after hearing the parties, pass such orders as it thinks proper."

Since there is specific provision for appeal against the order passed in company application, which is filed under Section 40 of the Industrial Reconstruction bank of India Act 1984, hence, the appellant has remedy to file appeal before the competent Court. Therefore, we are of the view that no Special Appeal lies against the order impugned which has been passed in a company application.

Accordingly, the Special Appeal is dismissed. However, the appellant is at liberty to file appeal before the competent Court.

(B.C. Kandpal, J.) **(M.M. Ghildiyal, J.)**

August 26, 2004:
NCM: